
(2010) 09 MP CK 0037

In the Madhya Pradesh High Court

Case No : Election Petition No. 48 of 2009

Dr. Bhagirath Prasad

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15
Representation of the People Act, 1951 — Section 117, 117(1), 123(4), 81, 81(1)
Representation of the People Rules — Rule 94A

Citation : AIR 2011 MP 93 : (2011) 1 JLJ 115 : (2011) 2 MPHT 229 : (2010) 4 MPLJ 485

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

This order disposes of I.A. No. 17535/09.

Following main objections have been raised in the said I.A.:

1. Election petition was presented by the counsel for the petitioner. In the absence of personal presentation by the Election Petitioner, there being violation of Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the "Act" for brevity), Election Petition is liable to dismissal.

Copy of election petition accompanied by annexures was not attested by the petitioner under his own signatures as true copy, which is violative of Sub-section (3) of Section 81 of the Act.

Though, Annexure P/28 is described in paragraph 30 of the election petition, the same is not annexed to the election petition. Annexure P/28 is a receipt pertaining to security deposit. In the absence of this document, election petition is not maintainable and is liable to be dismissed.

Allegations about corrupt practices are made against Bhagirath Prasad, an independent candidate, who has not been impleaded despite mandatory provision contained in Section 82 of the Act. Hence, the petition is liable to be dismissed for want of non-joinder of necessary party.

No affidavit has been submitted in support of the election petition stating thereby specifically on oath that which contents are true on the basis of personal knowledge and which are the contents based on information.

There is no verification of the original annexures which makes the election petition liable to be dismissed.

Shri Manish Vashishtha, Advocate, for the election petitioner and Shri Rameshwar Bhargava, Advocate, for the respondent No. 5 made their respective submissions.

It has been contended by Shri Bhargava, learned Advocate, that by virtue of Sub-section (1) of Section 81 of the Act, an election petition is to be necessarily presented by the election petitioner, in person. Reliance for this purpose is placed on 1978 LJ 850 (Ramanlal Premi v. Shivpratap Singh and Anr). 2008 (III) MPWN 92 (Urmila Devi v. Returning Officer (Panchayat) and Ors. and 2007 Utt 69 (Rajeev Gupta v. Union of India and Ors.). It has been stated in the affidavit dated 25.03.2010 that the election petition was submitted by Shri J.P. Saxena, Advocate, for the election petitioner.

I perused the original election petition which contains, an endorsement to the following effect:

Presented by Dr. Bhagirath Prasad petitioner, who is identified by Shri J.P. Saxena, Advocate at 4.30 PM on 29.6.2009

This endorsement has not been disputed at all by the respondent No. 5. This being so, it is observed in the light of the endorsement that the election petition was presented personally by the election petitioner.

Further, submission is that Annexure P/28 is security deposit receipt, which has not been annexed to the election petition.

There is no specific provision providing thereby that the receipt of security deposit is to be necessarily annexed to the election petition. It has been stated in paragraph 30 of the election petition that the security deposit of Rs. 2,000/- has been deposited vide receipt No. 97 Book No. 6617 dated 29th June, 2006. This was found correct as revealed in the endorsement made on the election petition itself. Learned Additional Registrar of the High Court of M.P. Jabalpur has clearly endorsed that the election petition was properly drawn-up, apparently within time and properly stamped. It is further mentioned in the said endorsement that the election petition is accompanied with spare number of copies, list of documents, registered address, PF and security amount of Rs. 2,000/-.

It is further submitted that the election petition is dated 27.6.2009, whereas,

security amount was deposited on 29.6.2009. Therefore, security amount paid on 29.6.2009 cannot be legally considered and the election petition may be dismissed on this count.

Sub-section (1) of Section 117 of the said Act reads as under:

117. Security for costs - (1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of two thousand rupees as security for the costs of the petition.

(2) During the course of the trial of an election petition, the High Court may, at any time, call up-on the petitioner to give such further security for costs as it may direct.

What is important according to this provision is that the petitioner shall deposit the security amount at the time of presentation of election petition. There is no requirement in the Act or rules that the receipt of security deposit must be annexed to an election petition.

Election petition as per endorsement was submitted on 29.6.2009 and the security amount having been already deposited even on 29.6.2009 will endure to the benefit of the election petitioner and the election petition is thus quite maintainable. Thus, this Court observes that the election petition cannot be legally dismissed u/s 86 of the said Act on the basis of objection No. 3.

It is further submitted that the affidavit in support of the election petition was verified at Gwalior on 27.7.2009, whereas, the verification of the election petition itself is shown to have been made at Gwalior/Jabalpur as revealed at page No. 15. Such defect, even if any, does not fall within the ambit of any of the Sections 81, 82 or 117 of the Act, more so, when the election petition was submitted on 29.6.2009 at Jabalpur as revealed in the endorsement made by the Additional Registrar of this Court. Accordingly, no dismissal is warranted at this stage on this ground.

It has been further seriously argued that copy of election petition with annexures served upon respondent No. 5 is not a true copy since it does not bear the signatures of the election petitioner with regard to the attestation. Respondent No. 5 has placed on record the copy of the election petition accompanied by annexures served upon him as Annexure R5-1. It is further demonstrated that the extra copy of the election petition plus annexures in the court record is similar to Annexure R5-1, which carries similar defects. It is therefore contended that there is violation of Section 81(3) of the Act and the election petition is liable to be dismissed u/s 86 of the Act.

Reliance, for this purpose, is placed on This Court's decision in the case of Shashi Bhushan Bajpai Vs. Madhavrao Scindia, paragraph 21 of which is reproduced below:

21. Apart from what has been said above, I may also mention another argument

of the learned Counsel for the respondent. The objection is that copy of the petition served on the respondent is not the true copy as it does not bear an endorsement of the authority before whom the petition was verified and the affidavit was sworn. In support of this contention the respondent has filed copy of the election petition served upon him and which has been taken on record as discussed above. In reply to this contention the argument of the learned Counsel for the petitioner is that the copy of the election petition which has been served on the respondent clearly shows that the affidavit was sworn before the Deputy Registrar who was authorised to administer oath. The copy filed by the respondent which was served upon him shows that it was been attested to be true copy by the petitioner himself. Endorsement on the copy is to the effect that "Attested to be a true copy under my own signatures" It purports to have been signed by the petitioner. It does not bear any endorsement of the authority before whom it was verified and the affidavit was sworn. In the aforesaid case of Dr. Shipra copy of affidavit supplied to the respondent did not contain verification by the notary who had attested the original affidavit filed along with election petition certifying to be a true copy. In the case in hand, as said earlier, even the original affidavit was not sworn before the competent authority. The copy shows that the affidavit was sworn before the Deputy Registrar. The law requires that the copy must also show that verification was made by the notary who had attested the original affidavit filed along with election petition. In that case it was held in para 11 that:

Therefore, compliance of the statutory requirement is an integral part of the election petition and true copy supplied to the returned candidate should as a sine quanon contain the due verification and attestation by the prescribed authority and certified to be true copy by the election petition in his/her own signature. The principle of substantial compliance cannot be accepted in the fact situation.

As the original affidavit itself was not properly sworn before the competent authority it can safely be said that the copy supplied was not in conformity with the law. This ground too can, therefore, be said to be a ground for dismissal of the petition at the threshold.

In the case in hand there is no objection that the affidavit was not properly sworn before the competent authority, therefore respondent No. 5 does not get any benefit from the decision in Shashibushan case (supra).

In the case of Mithilesh Kumar Pandey Vs. Baidyanath Yadav and Others, it has been held in paragraph 15:

15. On a careful consideration and scrutiny of the law on the subject, the following principles are well established:

(1) that where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes which are of no consequence, the petition cannot be dismissed straightway u/s 86 of the Act.

(2) A true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the court may not take notice thereof.

(3) where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate it cannot be said that there has been a substantial compliance of the provisions of Section 81(3) of the Act.

(4) Prime facie, the statute uses the words "true copy" and the concept of substantial compliance cannot be extended too far to include serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of Section 81(3) of the Act, and

(5) As Section 81(3) is meant to protect and safeguard the sacrosanct electoral process so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation to the provisions of the said section.

Further reliance is placed on *Rajendra Singh Vs. Smt. Usha Rani and Others*, wherein it has been held that the election petition is liable to be dismissed, if the respondent does not receive the correct copy of the election petition.

In the case of *Sharif-ud-din Vs. Abdul Gani Lone*, it has been held that the requirement that every copy of the election petition which is intended for service upon the respondents should be attested by the election petitioner under his own signature and the non-compliance with that requirement should result in dismissal of the election petition.

Learned Counsel for respondent No. 5 contended that since the copy of election petition with accompanying annexures served upon him is not a true copy of election petition with annexures, the election petition is liable to be dismissed due to violation of Section 81(3) of the Act.

In the case of *T.M. Jacob Vs. C. Poullose and Others*, Constitution Bench of the Supreme Court of India has observed:

34. Similar view was reiterated by another Constitution Bench in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad* wherein it was held that the expression "copy" occurring in Section 81(3) of the Act did not mean an exact copy but only one so true that no reasonable person could by any possibility misunderstand it as not being the same as the original. Agreeing with the view of the Constitution Bench in *Murarka Radhey Shyam Ram Kumar Case* the Constitution Bench in *Ch. Subbarao* case ruled that substantial compliance with Section 81(3) was sufficient and the petition could not be dismissed where there had been substantial compliance with the requirements of Section 81(3) of the Act, in limine, u/s 81(1) of the Act. We are in respectful agreement with the view expressed by the Constitution Bench in *Murarka Radhey Shyam Ram Kumar* case as well as in *Ch. Subbarao* case.

The object of serving a "true copy" of an election petition and the affidavit filed in support of the allegations of corrupt practice on the respondent in the election petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defence. The requirement is, thus, of substance and not of form.

Learned Counsel for the respondent has been unable to point out any material or substantial defect of vital nature, which could have misled a reasonable person to understand and meet the allegations contained in the election petition.

Admittedly, election petitioner has served upon the counsel for the respondent No. 5 another copy of election petition alongwith annexures. No defect has been pointed out in such copy. This being so, objection No. 2 of the respondent No. 5 is not liable to be accepted in view of the decision of the Apex Court in the case of Anil R. Deshmukh Vs. Onkar N. Wagh and Others, . I may successfully refer the following passage of para 10 of the said decision:

We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case, the true copies of the affidavits had been served on the first respondent and his counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance with the provisions of Section 81(3) read with Section 83(1)(c) of the Act even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act. Unfortunately, this aspect of the matter has been completely ignored by the High Court. Hence the order of the High Court dismissing the election petition in limine is unsustainable.

As regards objection No. 4, it is submitted in the light of para 12 of the election petition that in the document marked as Annexure P/11, as annexed to the election petition, one Bhagirath Prasad is shown as its author, who was an independent candidate for the parliamentary constituency, Bhind-Datia, which is in question. This being so, the election petition is not maintainable for want of joinder of Bhagirath Prasad in view of Clause (b) of Section 82 of the Act.

This has been countered by the learned Counsel for the election petitioner that no allegation of corrupt practice has been made in respect of the said Bhagirath Prasad. According to the petitioner, Annexure P/11 was published at the behest of BJP. Accordingly, said Bhagirath Prasad (independent candidate) is not necessary party and is not liable to be impleaded. Learned Counsel appearing for the election petitioner expressed his disinclination to join the said Bhagirath Prasad on the ground that he is not stated to be the author of Annexure P/11 and no allegations are leveled against him in the election petition. Equally, no relief has been prayed against him.

In order to appreciate the rival contentions, I feel it proper to reproduce para 12 of the Election Petition, which is as follows:

12. That one Ram Bharosi Jatav claiming to be the General Secretary of the State Jatav Sabha, Bhim Nagar, Distt. Bhind, circulated a pamphlet spreading a false character assassination of the petitioner stating that petitioner married Meharunnisa in 1980, which is basically false. He also mentioned in the pamphlet that Bhagirath Prasad (Petitioner) after adopting Islam is contesting election of Lok Sabha from 02 Bhind (SC) seat. This statement is false inasmuch as petitioner never adopted Islam Dharm. The pamphlet also falsely exhorts voters that it is religion of humanity (Manav Dharm) to teach lesson to such perverted man who is inebriated/drunken with the power and has deceived Hindu and Muslim. It is reiteration of what the BJP leaders in their election meeting and canvassing (P-7, P-8 and P-10) have publicly spoken. It goes to demonstrate that this pamphlet has been distributed within knowledge of returned candidate and BJP. ON enquiry at the instance of petitioner, in ward No. 4, Bhimnagar, Bhind a number of people including the councilor of ward No. 4 revealed that there is no man of the name of "Ram Bharosi Jatav" in Bhimnagar, Bhind. These people also disclosed that this nefarious act has been done by the opposition party viz. BJP by printing the pamphlet in anonymous name to defame and adversely affect the election prospect of petitioner. To this effect the people of Bhimnagar including the Municipal Councilor have written a Panchnama to expose the act of BJP and its candidate respondent 5. In addition to this all the allegations against petitioner by the BJP leaders were formalized in the shape of advertisement and published in the News Papers as an appeal in "Swadesh" and "BPN Times" dated 30.04.2009 (Thursday). This act at the behest of BJP and within the knowledge of returned candidate respondent 5 is a glaring example of corrupt practice within the meaning of Sub-section 4 of section 123 of the Act. A copy of the pamphlet printed by Gyan Deep Printers, Gwalior disclosing no date thereon along with Panchnama of residents of Bhimnagar, and Municipal Councilor of ward No. 4 Bhind and the press clippings of the said news papers is made Annexure P-11 (Colly) to this EP.

From the perusal of the aforesaid paragraph, it is clear that no allegation is made against the said independent candidate Bhagirath Prasad. He has not been shown scribe or author of Annexure P/11 and no relief has been claimed against him. On record, it seems that according to the election petitioner the press clippings of the news papers contained in Annexure P/11 have been published at the behest of BJP, that too, within the knowledge of the respondent No. 5.

Considering the aforesaid, it is held that non joinder of Bhagirath Prasad despite being independent candidate is not fatal in the facts and circumstances of the present case and Clause (b) of Section 82 of the Act does not get attracted.

Coming to the objection No. 5 it is observed that the election petitioner has submitted an affidavit as required under the rules. It is objected to the ground that particular paragraphs on the basis of personal knowledge and on the basis of information received have not been mentioned in specific.

In the case of Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Others,

it has been observed that:

14. So is the case with the defect pointed out by the High Court in the affidavit filed in support of the election petition alleging corrupt practice by the winning candidate. The proviso enacted to Sub-section (1) of Section 83 of the Act is couched in a mandatory form inasmuch as it provides that a petition alleging corrupt practice shall be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof. The form is prescribed by Rule 94-A. But at the same time, it cannot be lost sight of that failure to comply with the requirement as to filing of an affidavit cannot be a ground for dismissal of an election petition in limine under Sub-section (1) of Section 86 of the Act. The point is no more *res integra* and is covered by several decisions of This Court. Suffice it to refer to two recent decisions namely *G. Mallikarjunappa v. Shamanur Shivashankarappa and Vijay Laxmi Sadho (Dr.) v. Jagdish*, both three-Judge Bench decisions, wherein the learned Chief Justice has spoken for the Benches. It has been held that an election petition is liable to be dismissed in limine u/s 86(1) of the Act if the election petition does not comply with either the provisions of "Section 81 or Section 82 or Section 117 of the RP Act". The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in Section 83(1) of the Act. Non-compliance with the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be dismissed in limine u/s 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or 83(2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.

In the case of *Chandrakant Uttam Chodankar Vs. Shri Dayanand Rayu Mandrakar and Others*, it has been observed that:

66. It is now well settled that the statutory requirements of Section 81 and 83 would be met if substantial compliance thereof is made.

A Constitutional Bench of this Court in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* interpreting Sub-section (3) of Section 81 observed that the expression "copy" contained therein would not mean an absolutely exact copy, but would mean that the "copy" shall be so true that nobody can by any possibility misunderstand it. It was further opined:

The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person.

Sub-section (3) of Section 81 or Section 83(1) of the Act although may or may not be mandatory but it is not in dispute that the defects pointed out therein, if any, would be curable. Only when despite opportunities granted such defects are not cured, as would appear from the discussions made hereinafter, that the

election petition may be dismissed. Furthermore, correctness or otherwise of a statement made in the election petition would not entail rejection thereof at the threshold or would attract the provisions of Section 86 of the Act.

Section 83 of the Act deals with contents of an election petition Clause (a) of Sub-section (1) of Section 83 provides that an election petition shall contain a concise statement of the material facts, whereas Clause (b) thereof provides that in case of corrupt practice full particulars in relation thereto are to be set out. Clause (c) of Sub-section (1) of Section 83 provides that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of the pleadings i.e. Order 6 Rule 15 CPC. A defective affidavit would not entail in limine dismissal of the election petition.

In the case of Umesh Challiyil Vs. K.P. Rajendran, it has been held that election petition can not be dismissed u/s 86(1) at the outset on ground of technical or cosmetic defects.

As regards objection No. 6, it is observed that the original Annexures annexed to the election petition are attested true and correct copy of the originals under the signatures of the petitioner himself. Thus, this objection has no substance.

From the discussion made hereinabove, it is clear that respondent No. 5 has been unable to point out any material or substantial defect which could have prejudiced him in taking appropriate defence. Objections raised by respondent No. 5 thus do not go to the root of the matter and an opportunity to rectify most of the defects on an appropriate application may be provided. In any case, objection raised by respondent No. 5 will not entail dismissal of the election petition at a threshold u/s 86(1) of the Act. I may successfully refer the following observations of the Apex Court in the case of Ram Prasad Sarma Vs. Mani Kumar Subba and Others,

17. The purpose of the provision to furnish a true copy of the petition is not to frustrate the cause of the petitioner approaching the Court by adhering strictly to technicalities of little consequence. On the other hand the anxiety is that the respondent must have a correct idea of the allegations of corrupt practices made against him with some responsibility and that he may not be misled in any material respect by furnishing of a copy of the affidavit which may not be a correct copy having vital variation from the original. It is true that in the matters relating to elections and election petitions, strict compliance with the legal provisions is necessary and full care is to be taken to see that rights of an elected representative are not lightly disturbed and rightly so. But an election petition is not to be thrown at the threshold on the slightest pretext of one kind or the other which may or may not have any material bearing on the factors to be strictly adhered to in such matters. It is substance not form which would matter. If it is permitted otherwise, the returned candidate would only be on the lookout microscopically for any kind of technical lacuna or defect to abort the endeavour of the petitioner to bring to trial the issues relating to corrupt

practices in the elections. The purpose of the law on the point cannot be to allow the returned candidate to avoid the trial of the issues of corrupt practices raised against him on the basis of any little defect which may not result in any vital variation between the original and the true copy so as to have the effect of misleading the returned candidate. As it is, the prevailing situation of elections and practices often said to be adopted now and then and here and there does not always give a very happy picture. Free, fair and fearless elections is an ideal to be achieved and not to be defeated for the sake of pretentious and frivolous technicalities.

In the result, none of the objections raised by the respondent No. 5 in I.A. No. 17535/09 is found to have any force so as to warrant dismissal of the election petition u/s 86(1) of the Act.

Consequently, I.A. No. 17535/09 is hereby dismissed.